

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARY ANN LOCKE)	
Claimant)	
)	
VS.)	Docket No. 1,022,998
)	
INTERSTATE BRANDS CORP.)	
Self-Insured Respondent)	

ORDER

Claimant requested review of the Preliminary Decision by Administrative Law Judge Robert H. Foerschler. This is a post-award proceeding for medical benefits. The case has been placed on the summary docket for disposition without oral argument.

APPEARANCES

Leah Brown Burkhead of Mission, Kansas, appeared for the claimant. M. Joan Klosterman of Kansas City, Missouri, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the post award record and adopted the stipulations listed in the Award.

ISSUES

This is a proceeding for post award medical treatment. The parties settled this claim on March 13, 2006, but left the claimant's right to future medical treatment open. A hearing on claimant's application for post-award medical treatment was held on May 31, 2007. Claimant was seeking additional medical treatment for her back and left knee as well as attorney fees. At the conclusion of the post-award medical hearing, claimant's attorney requested that the record be left open 5 days in order to submit additional evidence. The Administrative Law Judge (ALJ) agreed the record would be left open an additional 10 days. But before the expiration of 10 days the ALJ entered a Preliminary Decision on June 4, 2007.

The ALJ did not address claimant's request for treatment for her left knee or the issue of attorney fees. The ALJ simply addressed the medical procedure claimant was seeking for her back by noting the requested procedure would only be approved "if some consensus about the prospects by other qualified provider is shown."

The claimant requested review and argues that it was unclear whether the ALJ intended the preliminary decision to be final or whether he intended to issue a final decision after the evidence was fully submitted. In any event, claimant argues the Preliminary Decision was issued before the agreed extension of time to submit evidence and was premature. Consequently, claimant requests the Board to remand the matter to the ALJ for a final decision after complete submission of all the evidence within the terminal dates.¹

Respondent also argues that the ALJ's Preliminary Decision was not intended to be the final determination of the issues raised at the Post-Award Medical hearing. Consequently, respondent also requests that the Board remand this case to the ALJ for a final decision after complete submission of all the evidence within the terminal dates.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

An application for post award medical is subject to the same hearing procedure as provided in K.S.A. 44-523². K.S.A. 44-523(b) instructs that an ALJ:

shall set a terminal date to require the claimant to submit all evidence in support of the claimant's claim no later than 30 days after the first full hearing before the administrative law judge and to require the respondent to submit all evidence in support of the respondent's position no later than 30 days thereafter.

After all the parties have submitted their evidence the ALJ then reviews the evidentiary record compiled within the established terminal dates and issues a decision.³ Although not bound by the technical rules of procedure, the ALJ is required to give the parties a reasonable opportunity to be heard and to present evidence, to ensure the employee an expeditious hearing and to act reasonably without partiality.⁴

¹ After the post-award hearing, the parties apparently agreed to extend claimant's terminal date to June 19, 2007, and respondent's terminal date to July 31, 2007. And respondent's counsel's brief to the Board indicates that a joint motion has been filed to further extend terminal dates pending an additional medical evaluation of claimant.

² See K.S.A. 44-510k(a).

³ See K.S.A. 44-523(c)

⁴ K.S.A. 44-523(a).

The record establishes that claimant's request that the record be left open for submission of additional evidence was granted. The ALJ agreed the record would be kept open an additional 10 days. But before that time expired the ALJ issued a Preliminary Decision. By issuing his decision before expiration of the terminal date the ALJ violated the express provisions of K.S.A. 44-523(a) as claimant was denied the opportunity to be heard and present evidence. Moreover, the Preliminary Decision was simply premature because it was issued before the evidentiary record had been completed. The Board finds that the Preliminary Decision should be set aside and this case should be remanded to the ALJ for a decision based upon the entire evidentiary record and to establish new terminal dates.

AWARD

WHEREFORE, it is the decision of the Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated June 4, 2007, should be set aside and the matter is remanded to the Administrative Law Judge for further proceedings and/or determination consistent with the findings and conclusions herein.

IT IS SO ORDERED.

Dated this _____ day of August 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Leah Brown Burkhead, Attorney for Claimant
M. Joan Klosterman, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge